APPEAL NO. 151527
FILED OCTOBER 1, 2015

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing was held on May 1, 2015, with the record closing on July 9, 2015, in Fort Worth, Texas, with (hearing officer) presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that: (1) the (date of injury), compensable injury does not extend to cervical IVD without myelopathy and multiple cervical disc bulging at C3-4, C4-5, C5-6, and C6-7; (2) the appellant (claimant) reached maximum medical improvement (MMI) on April 30, 2014; and (3) the claimant's impairment rating (IR) is zero percent.

The claimant appealed, disputing the hearing officer's determinations of the extent of the injury, MMI and IR. The claimant contends on appeal that medical causation evidence presented was sufficient to establish that the compensable injury extended to the disputed conditions. Additionally, the claimant contends on appeal that the designated doctor's certification of MMI and IR cannot be adopted because it fails to explain the reasoning for the MMI date and because the designated doctor failed to send the claimant for further testing. The respondent (self-insured) responded, urging affirmance of the disputed extent of injury, MMI, and IR determinations.

DECISION

Affirmed in part and reversed and remanded in part.

The parties stipulated in part that the self-insured has accepted a (date of injury), compensable injury in the nature of a cervical spine sprain/strain and lumbar spine sprain/strain. The claimant testified that he was injured in a motor vehicle accident.

EXTENT OF INJURY

The hearing officer's determination that the (date of injury), compensable injury does not extend to cervical IVD without myelopathy and multiple cervical disc bulging at C3-4, C4-5, C5-6, and C6-7 is supported by sufficient evidence and is affirmed.

MMI AND IR

Section 401.011(30)(A) defines MMI as "the earliest date after which, based on reasonable medical probability, further material recovery from or lasting improvement to an injury can no longer reasonably be anticipated." Section 408.1225(c) provides that the report of the designated doctor has presumptive weight, and the Texas Department

of Insurance, Division of Workers' Compensation (Division) shall base its determination of whether the employee has reached MMI on the report of the designated doctor unless the preponderance of the other medical evidence is to the contrary.

Section 408.125(c) provides that the report of the designated doctor shall have presumptive weight, and the Division shall base the IR on that report unless the preponderance of the other medical evidence is to the contrary, and that, if the preponderance of the medical evidence contradicts the IR contained in the report of the designated doctor chosen by the Division, the Division shall adopt the IR of one of the other doctors. 28 TEX. ADMIN. CODE § 130.1(c)(3) (Rule 130.1(c)(3)) provides that the assignment of an IR for the current compensable injury shall be based on the injured employee's condition as of the MMI date considering the medical record and the certifying examination.

The hearing officer determined that the certification of MMI and IR from (Dr. J), the designated doctor, is supported by the preponderance of the other medical evidence. Dr. J examined the claimant on June 27, 2014, for purposes of MMI and IR. Dr. J certified that the claimant reached MMI on April 30, 2014, with a zero percent IR, using the Guides to the Evaluation of Permanent Impairment, fourth edition (1st, 2nd, 3rd, or 4th printing, including corrections and changes as issued by the American Medical Association prior to May 16, 2000) (AMA Guides). However, the sole impression given in Dr. J's narrative report was acute neck sprain/strain. Dr. J placed the claimant at MMI on April 30, 2014, because he stated this was the last documented office visit after completion of approved physical therapy in the context of the compensable work-related injury of neck sprain/strain. Dr. J placed the claimant in Cervicothoracic Diagnosis-Related Estimate (DRE) Category I: Complaints or Symptoms, assigning a zero percent IR for a cervical sprain/strain. Dr. J does not discuss a lumbar sprain/strain in his narrative report and does not consider a lumbar spine sprain/strain in certifying MMI or assigning IR for the claimant. As previously noted, the parties stipulated that the self-insured has accepted a cervical spine sprain/strain and a lumbar spine sprain/strain as part of the compensable injury.

Dr. J responded to a letter of clarification on May 7, 2015, after receipt of additional medical records. Dr. J stated that based on his review of the additional medical records there is no significance of the clinical and imaging findings in the context of the work-related injury in question. However, Dr. J does not specifically address a lumbar spine sprain/strain in his response. Because Dr. J did not rate the entire compensable injury, his certification cannot be adopted. *See* Appeals Panel Decision (APD) 150341, decided April 24, 2015. Accordingly, we reverse the hearing officer's determinations that the claimant reached MMI on April 30, 2014, and the claimant's IR is zero percent.

(Dr. F), a referral doctor acting in place of the treating doctor, examined the claimant on August 4, 2014, and certified that the claimant had not yet reached MMI. Although not specifically identified in his report, Dr. F lists four different diagnoses for consideration of the claimant's condition when certifying the claimant had not yet reached MMI. Dr. F stated that additional treatment had been recommended for the claimant's "right cervical spine condition" which could be accompanied by a surgical consultation. Dr. F referenced disc pathology of the MRI at the C5-6 level and median branch blocks at the C4-5 and C5-6 levels bilaterally. Dr. F considered and rated conditions which have not been determined to be part of the compensable injury and his certification cannot be adopted.

(Dr. M), a carrier-selected post-designated doctor required medical examination doctor, examined the claimant on December 8, 2014. In his narrative report, Dr. M noted that the claimant had a cervical strain and a lumbar strain. Dr. M opined that the claimant should have reached MMI on May 1, 2014, for a soft tissue strain of the cervical spine and lumbar spine. Further, in his narrative report, Dr. M placed the claimant in Cervicothoracic DRE Category I: Complaints or Symptoms for zero percent impairment and also placed the claimant in Lumbosacral DRE Category I: Complaints or Symptoms for zero percent impairment. However, no Report of Medical Evaluation (DWC-69) from Dr. M was in evidence. Rule 130.1(d)(1) states that a certification of MMI and assignment of an IR requires completion, signing, and submission of the DWC-69 and a narrative report. See APD 131085, decided June 27, 2013. Accordingly, the date of MMI and IR provided in Dr. M's narrative report cannot be adopted.

No other certifications of MMI and IR are in evidence. Accordingly, we remand the issues of MMI/IR to the hearing officer for further action consistent with this decision.

SUMMARY

We affirm the hearing officer's determination that the (date of injury), compensable injury does not extend to cervical IVD without myelopathy and multiple cervical disc bulging at C3-4, C4-5, C5-6, and C6-7.

We reverse the hearing officer's determinations that the claimant reached MMI on April 30, 2014, and that the claimant's IR is zero percent and remand the issues of MMI and IR to the hearing officer.

REMAND INSTRUCTIONS

Dr. J is the designated doctor in this case. The hearing officer is to determine whether Dr. J is still qualified and available to be the designated doctor. If Dr. J is no

longer qualified or available to serve as the designated doctor, then another designated doctor is to be appointed.

The hearing officer is to advise the designated doctor that the (date of injury), compensable injury extends to a cervical spine sprain/strain and lumbar spine sprain/strain but does not extend to cervical IVD without myelopathy and multiple cervical disc bulging at C3-4, C4-5, C5-6, and C6-7.

The hearing officer is to request the designated doctor to give an opinion on the claimant's date of MMI and rate the entire compensable injury in accordance with the AMA Guides considering the medical record and the certifying examination.

The parties are to be provided with the designated doctor's new MMI/IR certification and are to be allowed an opportunity to respond. The hearing officer is then to make a determination of MMI and IR consistent with this decision.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Division, pursuant to Section 410.202 which was amended June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods. *See* APD 060721, decided June 12, 2006.

The true corporate name of the insurance carrier is **CITY OF FORT WORTH (a self-insured governmental entity)** and the name and address of its registered agent for service of process is

MARY J. KAYSER, CITY SECRETARY
1000 THROCKMORTON
FORT WORTH, TEXAS 76102.

Margaret L. Turner
Appeals Judge

CONCUR:

Veronica L. Ruberto
Appeals Judge

Carisa Space-Beam
Appeals Judge